

**REQUEST FOR QUALIFICATION BASED
PROPOSALS FOR
DESIGN/BUILD PROJECT DELIVERY SERVICES**



**SANTA FE COUNTY PUBLIC SAFETY COMPLEX
IMPROVEMENT PROJECT
SANTA FE, NEW MEXICO**

New Mexico Commodity Code: 90625

RFP No. 2022-0068-PW/BT

December 2021

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I. ADVERTISEMENT

SANTA FE COUNTY

**Request for Qualifications-Based Proposals
And Best Value Selection**

For

Design Build Project Delivery Services

Santa Fe County Public Safety Complex Improvement Project

Renovation and Additions

RFP No. 2022-0068-PW/BT

Santa Fe County (County) is requesting proposals from licensed, qualified Offeror's to provide Design Build Delivery Services based upon the scope of work outlined in this Request for Qualifications Based Proposal (RFP). All potential Offeror's are to read, understand and accept the requirements of this RFP. All proposals submitted shall be valid for ninety (90) days subject to action by the County. The County reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed container indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container. All proposals shall be received by **2:00 PM (MDT) on January 26, 2022**, at the Santa Fe County Purchasing Division, 102 Grant Street, Santa Fe, New Mexico 87501. To combat the spread of the recent COVID-19 illness, the submission of Proposals **will also be accepted electronically** utilizing a DropBox. Please utilize this link to upload your proposal submission. <https://www.dropbox.com/request/7cVl6Lty71H7fvt321kp>. By submitting a proposal for the requested services, each Offeror is certifying that it is a qualified firm and its proposal complies with regulations and requirements stated within the Request for Proposals.

A Mandatory Pre-Proposal Conference will be held on **January 5, 2022 at 1:30 PM (MDT) online via Webex** <https://sfco.webex.com/sfco/j.php?MTID=m3d8d636e082689cc7e6614f6acbbcdc8>; **by calling: 1-408-418-9388, meeting number 2497 777 6927 and password:TxnPunYP354** or in person at the Public Safety Complex located at 35 Camino Justicia, off State Highway 14 in Santa Fe, New Mexico, 87501. Attendance at the Pre-proposal conference is mandatory. Attendance to the Pre-proposal meeting is pre-requisite to submitting a proposal.

EQUAL EMPLOYMENT OPPORTUNITY: All qualified Offeror's will received consideration of contract(s) without regard to race, color, religion, sex or national origin, ancestry, age, physical and mental handicap, serious medical conditions, disability, spousal affiliation, sexual orientation or gender identity.

Request for proposals will be available by contacting Amanda Patterson-Sanchez, Procurement Specialist Senior, 102 Grant St, Santa Fe, New Mexico 87501, by telephone at (505) 992-6753, or by email at apatterson-sanchez@santafecountynm.gov or via the County website at www.santafecountynm.gov/services/currentsolicitations.

PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.

II. INTRODUCTION

A. PURPOSE OF THE REQUEST FOR PROPOSALS

The Santa Fe County Public Safety Complex (PSC) is located at 35 Camino Justicia, in Santa Fe, New Mexico. The Complex facilitates the operations of the County Regional Emergency Communications Center (RECC), Sheriff's Office, Fire Department and the Public Safety Department administrative functions. The RECC is a 24 hour, 7 days a week operation that receives calls and dispatches emergency information for Sheriff, fire, medical, animal control, emergency 911 and non-emergency calls for three jurisdictions and is one of the more critical operations within Santa Fe County. This operation initiates all public safety communications and direction within Santa Fe County, including the City of Santa Fe.

The facility is currently experiencing overcrowded conditions for all operations within the facility. A recent assessment of the operational functionality of the PSC has identified certain space and infrastructure needs at the facility that effect all operations.

Santa Fe County (County) is requesting proposals from Design-Build Teams to provide design and construction services for the Santa Fe County Public Safety Complex Improvement Project (Project) by utilizing a Best Value Selection (BVS) based upon the Scope of Work described below.

The BVS is a two-step, or two-phased competitive procurement approach. In Phase I, a short list of the most highly qualified Design-Build Offerors results from a qualifications-based competition. In Phase II, the owner issues technical performance criteria and other project requirements to the short-listed teams, as the second step or phase of this RFP. Each short-listed Offeror will respond with a qualitative proposal and firm price. The owner will employ the same evaluation members and system that appropriately balances qualitative features and price. The owner reviews each qualitative proposal and price, and makes a selection based upon an integrated assessment of what constitutes the "best value" (combination of qualitative factors and price) for the County.

All potential Offerors are to read, understand and accept the requirements of this Request for Qualification-Based and Best Value Selection (RFP). It is the County's intent to select the most qualified Design-Build Delivery Team using a **two-phased selection process** for contract award.

B. BACKGROUND

The PSC was opened in 2002, occupies approximately 4.5 acres representing a portion of Tract 1 of the Rancho Viejo Partnership and is located on the north side of Camino Justicia. As a condition of the Property Deed with the Rancho Viejo Partnership, any design and construction planned on the Public Safety Complex Tract must be reviewed and approved by the Partnership.

The facility is located on the north side of Camino Justicia. The east wall of the Sheriff's office is approximately 110' from the east property line. The north wall of the Regional Emergency Communications Center (RECC) is approximately 515' from the north property line. The west wall of the Fire Department/Maintenance Bay is approximately 710' from the west property line. The building setback on the east and south property lines is 50' and 90' to the west property line.

The County has identified the need to construct approximately 6,000 square foot building to house the RECC administration, operator building and Information Technology (IT) staff and data room. This would allow for the Sheriff's Office to expand its operational space within the existing facility, as well as allow for some improvements to the Fire Department's Maintenance Bay, also located at the existing PSC.

C. SCOPE OF WORK

In 2014, the County commissioned a program and assessment of the PSC. By utilizing a Design-Build project delivery method, the County is authorized to plan, design and construct improvements to the PSC.

The selected Design- Build Team will be required to design and construct improvements to specific elements of the Public Safety Complex.



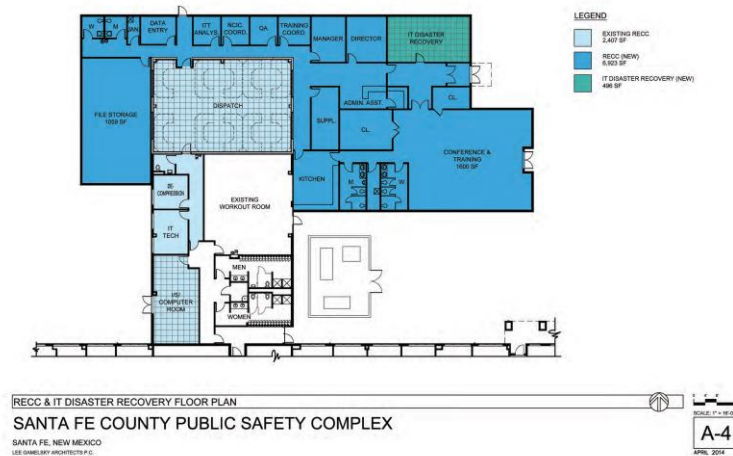
- RECC improvements include approximately 6,000 square feet (sf) new RECC facility that will be located within close proximity to the existing PSC. The new facility will include administrative offices, a training room, break room with separate decompression area, dispatch area and facilities to house the IT operational staff, HVAC, electrical and IT connectivity improvements are integral to the scope work and should be planned with safety, security and redundancy where recommended to protect the operations of the complex. Site work will include modification/expansion of parking facilities to replace lost capacity and improve functionality.

- The improvements and modifications to the Sheriff's wing include additional office space for several different departments, expanding the Sheriff's evidence impound area and re-roofing of the Thermoplastic Polyolefin (TPO) roof area to maintain efficient operations and increase current capacity.
- The improvement to the Fire Department wing including converting the existing Fire fleet maintenance bays to have the capabilities for "drive-through" access and egress.
- The project will include all utility and infrastructure requirements and improvements including but not limited to electrical, gas, telecommunications, sanitary sewer and fire protection & suppression.
- Specialty elements and considerations for the project shall include but are not limited to the following:
 1. Green building, water and energy conservation, and other sustainability elements that can be included in both the new complex as well as the renovated existing building.
 2. Site design and access controls (parking lots and facility)
 3. Aesthetic elements to complement the existing administration building, to include the connectivity of pedestrian traffic between the new RECC building and the renovated building that will facilitate the Sheriff's Office and Fire Administration.
 4. The renovations and expansion to the existing Public Safety building would include the necessary code upgrades and reconfiguration of existing offices and public spaces to accommodate the space and operational needs of the County Sheriff personnel.

RECC

The RECC is currently undersized in terms of administrative, records storage, and training-conference space. The Project will include new construction of approximately 6,000 square foot building to house the RECC and IT operations, including the administrative office space, dispatch operations space and other common area space for the operation.

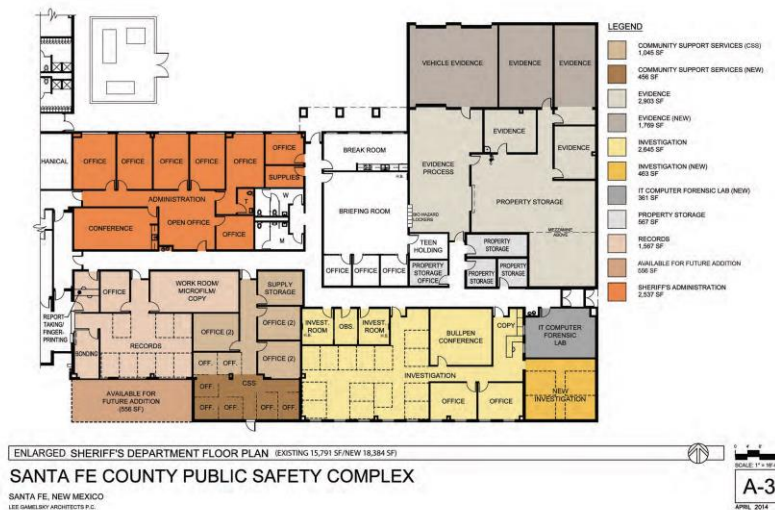
The following floor plan for the improvements is only included for visual representation of the areas involved in the Project.



Sheriff's Office

Other improvements include modifications to the Sheriff's office and Sheriff's evidence impound area to maintain and increase current capacity. The proposed upgrades are planned as an expansion to the building footprint to accommodate new evidence areas as well as additional office space.

The following floor plan for the improvements is only included for visual representation of the areas involved in the Project.



The intent of the project is to create an emergency facility environment that provides the highest-level of operational efficiency, including ease of ingress and egress, ease of maintenance, as well as comfort and support for building users and visitors.

In addition, the expansion and improvements in the project shall integrate building materials and methods that promote environmental quality and energy efficiency with special consideration to renewable energy sources to offset operating cost, wherever possible.

The nature of operations at the Complex mandate certain unique design and construction considerations and, as an emergency communications center, the facility must meet appropriate levels of security, resiliency and have the capacity of redundant systems for HVAC, electrical and IT communications.

It is critical that on-going operations of the RECC must be maintained continuously during the construction phase of the project. Accordingly, construction will need to be phased to allow temporary relocation of critical communications equipment into new space in advance of the “cut-over” from the existing space into the new space. Because the project involves the construction of a new and separate building for RECC operations, the Contractor must sequence-test the communications equipment in the new building in advance of the cut-over. A mock-operations test is required.

The Maximum Allowable Construction Cost (MACC) for this project (all phases) is \$4,000,000 exclusive of NMGR.

D. SCHEDULE OF SERVICES

As a design-build project allows the use of multiple concurrent elements, the goal of the project is to have the entire project (all phases) complete by June of 2023.

The County intends to work with the selected Offeror and develop a project/construction schedule in phases.

E. INSURANCE REQUIREMENTS

The insurance required by Offeror are listed below.

1. General Conditions. Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
2. General Liability Insurance, Including Automobile. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. County of Santa Fe shall be a named additional insured on the policy.
3. Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' Compensation Act.

4. Professional Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement a Professional Liability Insurance.
5. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), Contractor shall increase the maximum limits of any insurance required herein.

Please refer to the attached SAMPLE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN BUILDER for the insurance requirements for this project.

F. PROCUREMENT SPECIALIST

The County has designated a Procurement Specialist who is responsible for the conduct of this procurement whose name, address, and telephone number is listed below. All deliveries via express carrier should be addressed as followed:

Amanda Patterson-Sanchez
Santa Fe County Purchasing Division
102 Grant Ave.
Santa Fe, NM 87501
(505) 992-6753
Email: apatterson-sanchez@santafecountynm.gov
and
Bill Taylor, Procurement Manager
Santa Fe County Purchasing Division
102 Grant Ave.
Santa Fe, NM 87501
(505) 986-6373
Email: wtaylor@santafecountynm.gov

Any inquiries or requests regarding this procurement must be submitted in writing to the Procurement Specialist named above. ***Any contact or communication with any other County staff, outside of this Purchasing Office regarding this procurement may be grounds for disqualification.***

G. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout the Request for Qualifications Based Proposal (RFP), including appropriate abbreviations.

“ATC” means Alternative Technical Concepts

“Architect” means a member of the Design Build Team who is a New Mexico licensed architect and is responsible for the architectural

“BCC” means the elected Board of County Commissioners whom all powers of the County are vested and who are responsible for the proper and efficient administration of the County government.

“Close of Business” means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date provided in the RFP.

“Construction Contractor” means a member of the Design Build Team who is a New Mexico licensed general contractor and is responsible for the construction services and who will sign the Contract.

“Contract” or **“Agreement”** means a written agreement between the County (the Owner) and a firm for the work covered by this RFP.

“County” means Santa Fe County.

“DBIA” means Design Build Institute of America, and which contract documents will be utilized for this procurement.

“Design Build Project Delivery System” means a procurement process by which the County contracts with one firm who has the responsibility for the design, construction and delivery of a project under a single contract with the County.

“Design Build Team” or **“firm”** as the terms are used herein, are synonymous with one another and, within the broad definition mean any offeror, who may be a person, a legal entity, a consortium of experts, a joint venture, a team of persons who, through partnership, general of limited or other legal entity, corporation, association, other organizations, or any combination thereof, formally organized so that it may submit a qualified offer in response to a request for proposal and, as a result, who may be considered for a contract award for a design build project delivery systems with a Using Agency/Owner. No distinction is made between formally organized design build firms and a project-specific design build firm.

“Determination” means the written documentation of a decision by the Chief Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

“Desirable” the terms “may”, “can”, “should”, “preferable”, or “prefers” identify a desirable of discretionary item or factor (as opposed to “mandatory”).

“Evaluation Committee” or **“Selection Committee”** means a body appointed by the County to perform the evaluations of Offeror proposals. A body constituted in accordance with Section 13-1-121 NMSA 1978 to evaluate proposals and make recommendations and or selections of the heightened ranked Offerors based on qualifications and cost.

“Finalist” means an Offeror who meets all mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“MACC” means the maximum allowable construction cost which may include the estimated construction cost, the cost of design, utility connection fees, site development costs, built in equipment and furnishings, and a maximum contingency allowance of ten percent (10%).

“Mandatory” the terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory term or factor (as opposed to desirable) of this RFP. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal. Rejection of the proposal will be subject to review of the Selection Committee and a final decision on the rejection will be made the County’s Chief Procurement Officer.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP, with the intent of providing design build services for this project.

“Owner” as defined in the Agreement between the Owner and the Design Builder shall be Santa Fe County.

“Owner Team” means a Project Manager, the County Operations Division, County Manger’s Office, the County Planning Division, and the using agency.

“Procurement Specialist” means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Project” for the purposes of this solicitation means the Santa Fe County Public Safety Improvement Project.

“Project Team” means all members of the Design Build team including all consultants who will be responsible for the completion of the Project.

“Purchasing Division” means the County Central Purchasing Office.

“Proposal” is the Offerors phased response to this RFP.

“Request for Qualifications Based Proposals” or **“RFP”** means all documents including those attached or incorporated by reference, used for soliciting proposals for this Project.

“Responsible Offeror” or **“Responsive Proposal”** means an Offeror who submits a responsive proposal or who has furnished, when required, information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal of this RFP.

“Responsive Offeror” or **“Responsible Proposal”** means an offer or proposal which conforms in all material respects to the requirements set forth in the RFP as determined by the Selection Committee. Material respects of a request for proposals included but are not limited to: quality, quantity or delivery requirements.

“Selection” means a formal written notice by the Chair of the Selection Committee that a firm has been selected to enter into a contract for services.

“Technical Irregularities” are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offeror’s; that is, where there is no effect on price, quality or quantity. If discussions are not held or if best and final

offers upon which award will be made have been received, the Selection Committee may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the County. Examples include the failure of an Offeror to:

- a) Submit the number of signed proposals required by the RFP;
- b) Sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or
- c) Acknowledge receipt of an amendment involved had not effect on price, quality or quantity.

“Using Agency” means Santa Fe County and its' departments and offices.

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III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule governing the procurement, which describes the major procurement events and the conditions.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issuance of RFP	Purchasing Division	December 19 & 20, 2021
2. Pre-Proposal Conference	Owner/Offerors/ Purchasing	January 5, 2022
3. Acknowledgement of Receipt Form	Offerors	January 6, 2022
4. Deadline to Submit Written Questions	Offerors	January 7, 2022
5. Response to Written Questions	Purchasing Division	January 12, 2022
6. Submission of Phase I Proposal (2:00 PM)	Offerors	January 26, 2022
7. Phase I Proposal Evaluation Review	Evaluation Committee	February 4, 2022
8. Notice of Shortlisted Offeror's	Purchasing Division	February 7, 2022
9. Release of Phase II Documents to Shortlisted Offeror's	Purchasing Division	February 9, 2022
10. Phase II Mandatory Pre-proposal Conference/Site Visit	County, Offeror	TBD
11. ATC/Questions/Clarifications for Phase II	Purchasing Division/Offeror	TBD
12. Responses to Phase II Questions	Purchasing Division	TBD
13. Submission of Phase II Proposals (2:00 PM)	Offerors	TBD
14. Review of Phase II Proposals	Evaluation Committee	TBD
15. Interviews/Oral Presentation	Committee/Purchasing	TBD
16. Final Selection & Notice of Intent	County/CPO	TBD
17. Contract Award	County/Contractor	TBD

B. EVALUATION PROCESS

Background: Owner will utilize a two-phase request for proposal procedure for awarding the Contract as follows:

- a. During **Phase I**, the County Evaluation Committee will evaluate each Offeror's experience, technical competence; capacity & capability to perform; the past performance of the Offeror's team; and, other appropriate factors submitted by the team of Offeror in response to the RFP. Qualifications of Offeror's will be evaluated as described in Section IV.A., and a **maximum of 3 Offerors** will be short-listed in accordance with technical and qualification based criteria.
- b. During **Phase II**, each short-listed Offeror will receive Phase II documents with the RFP requirements, guidelines and criteria. County will invite short-listed Offerors to submit detailed specific technical concepts and solutions, costs, and scheduling. A MANDATORY Phase II Offeror's Conference will be conducted to allow short-listed Offeror's the opportunity to submit questions of clarification. Short-listed Offeror's will be evaluated by the Selection Committee using the criteria described in Section VI.B.1. Upon completion of the evaluation process, the selection will be made and the Contract awarded to the highest ranked Offeror.

The following sections describe the activities listed in the sequence of events shown in Section III A.

1. Issue of RFP – this RFP is issued by the Santa Fe County Purchasing Division in accordance with the provisions of Section 13-1-119 through 13-1-124 NMSA 1978.
2. Pre-Proposal Conference – a Pre-Proposal Conference is scheduled to occur on the date indicated in the “Sequence of Events” in Section III.A. Questions may be submitted at the Pre-Proposal Conference and up to the deadline indicated in the “Sequence of Events” in Section III.A. A public log will be kept of the names of potential Offerors that attended the Pre-Proposal Conference.
3. Acknowledgment of Receipt Form – a potential Offeror shall hand deliver, return by facsimile or email the “Acknowledgement of Receipt Form” provided in Appendix A to be placed on the procurement distribution list. The form shall be signed by an authorized representative of the organization, dated, and returned by close of business on the date indicated in the “Sequence of Events” in Section III.A.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

4. Deadline to Submit Additional Written Questions – potential Offerors may submit written questions regarding this RFP until the close of business indicated in the “Sequence of Events” in Section III.A. All written questions must be addressed to the Procurement Specialist listed in Section II.F and sent via facsimile or email. **Any contact with any other County staff member other than the Procurement Specialist named in this solicitation may be grounds for rejection of a Proposal.**

5. Response to Written Questions – written responses to written questions and any RFP addenda will be posted to the County Website and distributed to all potential Offerors whose names appear on the procurement distributions list, on the date indicated in the “Sequence of Events” in Section III.A.

6. Submission of Phase I Proposal – proposals shall be submitted in sealed envelopes, addressed to:

Santa Fe County Purchasing Division
RFP No. 2022-0068-PW/BT
102 Grant Ave.
Santa Fe, New Mexico
ATTENTION: Amanda Patterson-Sanchez, Procurement Specialist
&
Bill Taylor, Procurement Manager

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT SPECIALIST OR DESIGNEE NO LATER THAN **2:00 PM (MST) January 26, 2022**. **Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal.** Proposals must be addressed and delivered to the Procurement Office at the address listed in Section II F.

Proposals may also be submitted electronically via Dropbox at the link provided below.

<https://www.dropbox.com/request/7cVl6Lty71H7fvt321kp>

A public log will be kept of the names of all Offerors that have submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

Receipt of Proposals: The Purchasing Division will time-stamp proposals and will be held in a secure location in the Division. Proposals received after the deadline will be deemed non-responsive and will be returned unopened to the Offeror.

Confidentiality of Proposals: Proposals will not be opened publicly and shall not be open to public inspection until after contract award and conclusion of successful contract negotiations. An Offeror may request in writing non-disclosure of confidential data. Such data shall accompany the proposal and shall be readably separable from the proposal in order to facilitate eventual public inspections of the non-confidential portion of the proposal.

Non-Conforming Proposals: Proposals will be reviewed for completeness, format and compliance with the requirements of the RFP. If any proposal is deemed non-responsive by the Selection Committee, the Offeror will notified in writing of such determination.

7. Phase I Proposal/Shortlisting – the Selection Committee will review each proposal. Points will be allocated per **Section VII EVALUATION** of the RFP by the Evaluation Committee. Member's point totals will be translated to a numeric ranking. The Selection Committee member rankings will be totaled to determine the overall ranking of the firms. The Selection Committee shall determine the rankings without the possibility of a tie. A maximum of three (3) firms will be short-listed.

The evaluation of proposal will be performed by an Evaluation Committee appointed by County Management. The process will take place during the timeframe indicated in the "Sequence of Events"

described in III.A. During this time, the Procurement Specialist may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussion SHALL NOT be initiated by any Offeror.

8. Phase II Proposal Requirements – each shortlisted Offeror will receive Phase II Bridging Documents, to include but not limited to proposal requirements, guidelines, previously completed space programs, site, and design standards to the extent the information is known and available, previously completed archeological reports, survey documents, transportation studies, and as-built plans (as available).

9. Phase II Mandatory Pre-Proposal Conference/Site Visit – provides shortlisted Offerors an opportunity to discuss the details of the project criteria with the Owner’s Team. **SELECTED OFFEROR’S ARE REQUIRED TO ATTEND.**

10. Alternative Technical Concepts/Questions/Clarifications – prior to submission of the Phase II proposals, shortlisted Offerors will be scheduled to present any alternative technical concepts (ATC) to the Owner that are being considered by the Offeror. In addition, the shortlisted Offerors may contact the Procurement Specialist with questions about the scope of the project or the RFP schedule.

Amanda Patterson-Sanchez, Procurement Specialist, Senior

apatterson-sanchez@santafecountynm.gov

or

Bill Taylor, Procurement Manager, CPO

wtaylor@santafecountynm.gov

11. Addenda/ Responses to Ph II Written Questions – if an RFP amendment is deemed necessary, it will be issued no later than 5 business days prior to the submission deadline. The Purchasing Division will distribute the addenda in writing to all short-listed Offerors, and posted to the County Website.

12. Phase II Proposals Due – proposals shall be submitted in sealed envelopes, addressed to:

Santa Fe County Purchasing Division

RFP No. 2022-0068-PW/BT

102 Grant Ave.

Santa Fe, New Mexico

ATTENTION: Amanda Patterson-Sanchez, Procurement Specialist, Senior

Receipt of Proposals: The Purchasing Division will time-stamp proposals and proposals will be held in a secure location at the Division. Proposals received after the deadline will be deemed non-responsive and will be returned unopened to the Offeror.

Confidentiality of Proposals: Proposals will not be opened publicly and shall not be open to public inspections until after contract award and conclusion of successful contract negotiations. An Offeror may request in writing, non-disclosure of confidential data. Such data shall accompany the proposal and shall

be readably separable from the proposal in order to facilitate eventual public inspections of the non-confidential portion of the proposal.

Non-Conforming Proposals: Proposals will be reviewed for completeness, format and compliant with the requirements of the RFP. In any proposal is deemed non-responsive by the Selection Committee, the Offeror will notified in writing of such determination.

13. Interviews/Award –Notice to shortlisted Offerors will be provided to include the interview date, time, and location. The purpose of the interview is to allow the Offeror to present its qualifications, past performance, quality of proposed design solution, quality of construction approach, demonstrated response to program requirements, management plan for constructing the project, and cost and schedule. It will also provide an opportunity for the Evaluation Committee to seek clarification of the Offeror's design solution. Ninety (90) minutes will be allotted for each interview to include a thirty (30) minute question and answer session by the Selection Committee. Points will be allocated by each member of the Committee. Each member's point totals will be translated into a numeric ranking of the interviewed firms. Individual member rankings will be totaled together to determine the overall ranking after the interview. Points received from Phase I evaluation will **only** be used or carried over to the Phase II evaluation in the event of a tie. All calculations of point standings shall occur during the Evaluation Committee meeting for this project with all members in attendance.

14. Notice of Intent to Award – the Procurement Specialist will notify the selected Offeror in writing of the final intent to award. This notice will include the overall rankings for the project award. At this time, the Purchasing Division will maintain at least one copy of each Offeror's proposal. Proposals are opened for public inspection after the award and conclusion of successful contract negotiations. Any unsuccessful Offeror wishing to retrieve all copies of their proposal must do so within one (1) month after the Notice of Intent to Award.

15. Contract Negotiations – the Owner and successful Offeror will begin contact negotiations as soon as possible after the Notice of Intent to Award. If contract negotiations are not finalized within thirty (30) days after Notice of Intent to Award, Owner may terminate negotiations with the selected Offeror and begin negotiations with the next ranked Offeror based on final ranking.

16. Right to Protest and Protest Period – in accordance with Section 13-1-172 NMSA 1978, any Offeror who is aggrieved in connection with a solicitation or the award of a contract may protest in writing to the Procurement Manager. The written protest must be submitted within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest. Protests must be submitted in written form to:

Mr. Bill Taylor, Procurement Manager, CPO
Santa Fe County Purchasing Division
P.O. Box 276
Santa Fe, New Mexico 87504

Protests must include the name and address of the protestant, the solicitation number, and the statement of grounds for the protest, including appropriate supporting exhibits. Protests received after the deadline will not be accepted.

IV. GENERAL REQUIREMENTS INFORMATION

This section contains information regarding the RFP process and conditions under which this RFP is issued and how the intended project will be completed.

This procurement will be conducted in accordance with Chapter 13, NMSA 1978, NMAC 1.4.1 and Santa Fe County Procurement regulations.

A. Roles and Responsibilities of the Design Build Team – The following general services shall be provided by the Design Build Team in connection with the Project. The Design Build Team shall at a minimum:

- Become fully informed about the Project and have the experience and ability necessary to perform the related services.
- Provide human resources, equipment and facilities necessary to furnish the required services through all phases of the Project. This shall include, but not be limited to:
 - Coordinating and working closely with the Project Manager's from Santa Fe County.
 - Site Development and Planning.
 - Consider County and Using Agency's input on conceptual design.
 - Design development documents at 30%, 60%, 90%, and final.
 - Make presentations to and obtain feedback from County and Using Agency.
 - Prepare plans, specifications and construction documents (all materials used in construction shall meet all applicable code and regulatory requirements).
 - Obtain approval for the Project budget and Design from the County's Project Team at the completion of the various phases of design and construction document development.
 - Provide general architectural/engineering supervision and contract administration during construction.
 - Provide on-site observation during construction.
 - Analyze alternatives and design the most sustainable project consistent with economic feasibility, environmental characteristics, expected life of improvement, operations and maintenance, energy conservation and state-of-the-art technology.
 - Provide periodic estimate updates to assure the County that the actual construction costs remain within the Project budget.
 - Perform required services in an expeditious manner to coincide with the Project schedule.
 - Furnish qualified construction personnel who keep the County's team advised on A/E matters pertaining to the construction of the Project, and who will work towards the goals of obtaining results prescribed by the plans and specifications. This shall require cooperate between the County's team and the designated Project Manager with meetings on a weekly basis.
 - Possess professional ethics and qualifications and represent the County in accordance with a high standard of professional conduct.
 - Secure all applicable building permits.

B. Roles and Responsibilities of the County's Team – Examine documents submitted by the Design Build team and render decisions promptly to avoid unreasonable delay in the project.

- If the County observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the County to the Design Build team.

C. Acceptance of Conditions Governing Procurement – Offerors shall indicate their acceptance of the Conditions Governing the Procurement section in their Letter of Transmittal. Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement and Evaluation contained in Section VII of the RFP.

D. Incurring Cost – Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

E. Consultants and Subcontractors – Since the award is made on the qualifications-based evaluation process, replacement of consultants/subcontractors after award of and prior to the contract execution may cause the Offeror to be disqualified. The Contractor must perform all work that may result from this RFP, and payments will be made only to the Contractor. Use of sub consultants/subcontractors identified in the proposal is permitted, but since the award of the contract is to be made on a qualifications-based evaluation process, subcontracting the responsibilities of the Construction Contractor portion of the work is not permitted. Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The Contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

F. Amended Proposals – An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be completed replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. County personnel will not merge, collate, or assemble proposed materials.

G. Proposal Offer Firm – Responses to this RFP, including the Offeror's cost proposal, will be considered firm for ninety (90) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer.

H. Disclosure of Proposal Contents – Proposals are not open to public inspection until after an Offeror(s) has been selected for contract award.

An Offeror may request non-disclosure of confidential information in its proposal. Proprietary or confidential data shall be readably separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request for disclosure of information for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be disclosed. The proposal shall be open to public inspection subject to any statutory prohibition on the disclosure of confidential data.

I. No Obligation – This procumbent in no manner obligates the County or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

J. Termination – This RFP may be cancelled at any time and any and all proposals may be rejected in whole or in part when the County determines such action to be in the best interest of the County.

K. Sufficient Appropriation – Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will become effective by sending written notice to all parties to the RFP. The County's decision as to whether sufficient appropriations and authorizations are available, will be accepted by the selected Offeror as final.

L. Legal Review – The County requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Specialist and the Procurement Manager.

M. Governing Law – This procurement and any agreement with Offerors that may result shall be governed by the laws of the state of New Mexico.

N. Basis for Proposal – Only information supplied by the County in writing through the Procurement Specialist or in this RFP should be used as the basis for the preparation of the Offeror proposals.

O. Contract Terms and Conditions – The County will utilize the Design Build Institute of America (DBIA) Contract documents, and Addendum containing the terms and conditions set forth by the County in Appendix D - Standard Form of Agreement between Owner and Design/Builder Lump Sum as modified by the County. Any questions about the contract terms and conditions must be brought to the attention of the Procurement Specialist.

P. Contract Deviations – Any additional terms and conditions which may be the subject of negotiation, will be discussed only between the County and the selector Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

Q. Offeror Qualifications – The Selection Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Selection Committee will reject the proposal of any Offeror who is deemed not a Responsible Offeror or fails to submit a Responsive Offer as defined by NMSA 1978 13-1-83 and 13-1-85, and herein. The Selection Committee reserves the right to waive minor technical irregularities. This right is at the sole discretion of the Evaluation Committee, subject to Procurement Manager approval.

R. Clarification from Offerors – The Selections Committee after review of the proposals and/or interviews may request clarifications on information submitted by any and all Offerors in a written format with a specified deadline for response.

S. Release of Information – Only the Procurement Manager is authorized to release information about the Project covered by this RFP. Offerors must refer to the Procurement Manager any requests to release any information that pertains to the work or activities covered by any action or award related to this RFP.

T. Right to Waive Minor Irregularities – The Selection Committee reserves the right to recommend the waiver of minor irregularities. The Selection Committee also reserves the right to recommend the waiver of mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is as the sole discretion of the Procurement Manager.

U. Change in Contractor Representatives – The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County meeting its needs adequately. Any change in contractor representatives must receive prior County approval.

V. Notice – The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

W. County Rights – The County reserves the right to accept all or a portion of an Offeror's proposal.

X. Right to Publish – Throughout the duration of this procurement process and contract term, potential Offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

Y. Ownership of Proposals – All documents submitted in response to the RFP shall become property of the County. However, any technical or user documentation submitted with the proposals on the non-selected Offerors shall be returned after the expiration of the protest period.

Z. Electronic Mail Address Required – A large part of communication regarding this procurement will be conducted by electronic mail (e-mail). It is recommended that Offeror should have a valid e-mail address to receive this correspondence.

AA. Hold Harmless – If service delivered hereunder is covered by any patent, copyright, trademark or application thereof, the Design Build Team will indemnify and hold the County harmless from any and all losses, costs, expenses, and legal fees on account of any claims or legal actions filed for infringement of such rights by the Design Build Team.

BB. Purchase Order – The County will not be responsible for any service performed without its written and approved purchase order, contract or approved change under signed by the authorized representative.

CC. Compliance with Applicable Laws – The Design Build Team shall comply with all federal and state laws and regulations pertaining to work under its charge and shall bear all expenses associated with such compliance. The Design Build Team agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Design Build Team fails to comply with applicable worker's compensation laws and rules, the County may terminate the contract. The Design Build Team will be responsible for obtaining all required insurance.

DD. Conflict of Interest – The Design Build Team shall warrant that it presently has no interest and will not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of service under the award of the contract.

EE. Stipend – At the conclusion of Phase Two of this RFP, those short-listed firms who were not selected for contract negotiations will receive a flat stipend of **7,000.00 inclusive** of NMGRT, payable within thirty (30) days of a written Award of Contract, notwithstanding the provisions described under "Incurring Cost". The stipend payment may be denied if the "non-selected", short-listed firm fails to submit an acceptable design solution with their Phase Two response.

FF. Bid Bond – Securing in the amount of not less than five percent (5%) of the total amount of the proposal submitted is required of each short-listed, selected Offeror. An acceptable Bond or Cashier's Check must accompany each proposal as a guarantee that, if awarded the contract, the Offeror will enter into a contract promptly and execute the required Contract Documents. The successful Offeror's security will be retained until they have signed a contract and furnished required Payment and Performance Bonds. The security will become part of the County as liquidated damages for delay and additional expenses caused thereby in the event that the contract is not executed and/or acceptable one-hundred percent (100%) Performance and Payment bonds are not delivered within the time set forth. The County reserves the right to retain the security of the next two ranked Offerors until the accepted Offeror enters into a contract or until forty-five (45) days after the receipt of proposals, whichever is shorter. All other security will be returned within seven (7) days of the selection announcement.

GG. Preferences in Procurement by Santa Fe County – **NOTE: The Santa Fe County Preference will only apply in Phase I/Shortlisting Evaluation of the RFP. General Contractor may receive Resident in-state or Veteran in-state preference and the Architect/Engineering Firm may receive a Santa Fe County Preference (Ex. Possible for D-B Team to receive a total of 15% in preferences in Phase I)**

A. New Mexico In-state Preference

New Mexico Law, Section 13-1-21 NMSA 1978, provides a preference in the award of public works contracts for an "**in-state resident business**". Application of a resident business preference for any Offeror requires that the Offeror to provide a copy of a valid and current certificate as a resident business. Certifications are issued by the state Taxation and Revenue Department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident business certificate, 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score.

Certifications by the state Taxation and Revenue Department for the resident contractor takes into consideration such activities as the business or contractor's payment of property taxes or rent and payment of unemployment insurance on employees who are residents of the state.

OR

B. New Mexico Resident Veteran Preference

New Mexico Law, Section 13-1-22 NMSA 1978, provides a preference in the award of public works contracts for a “**resident veteran business**”. Certification by the state Taxation and Revenue Department for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran contractor preference to be applied to its proposal is required to submit with its proposal the certification from the state Taxation and Revenue Department and the sworn affidavit attached hereto as Appendix C.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 10%, 8%, or 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score, depending on the business' annual revenue.

C. Santa Fe County Preference

Santa Fe County Ordinance 2012-4 provides for a **County Preference** for a “Santa Fe County Business”. Application of the County preference in procurement requires an Offeror to obtain and provide a Santa Fe County Business Certificate issued by the Santa Fe County Procurement Manager. Certification by the Procurement Manager takes into consideration the business' corporate standing in the state, business licensure or registration, the duration of the business' primary office location and the payment of taxes.

If an Offeror submits with its proposal a copy of its Santa Fe County Business Certificate issued by the Procurement Manager, 5% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded to the Offeror's score.

The in-state, veteran or County preferences do not apply to procurement of services or goods involving federal funds or federal grant funds.

NOTE: Preference will only apply to Phase I/Short-listing evaluation of the RFP.

HH. Double-sided Documents – All submitted bids/proposal documents shall be double-sided, pursuant to Santa Fe County Resolution 2013-7, Adopting Sustainable Resource Management Principles, Section 2.A. “Waste Reduction and Reuse... all documents shall be double-sided, including those that are generated by outside entities using County funds and consultants and contractors doing business with the County”.

II. Living Wage – Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

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PHASE I

V. RESPONSE FORMAT, ORGANIZATION, AND SPECIFICATIONS

A. Number of Responses – Only one proposal may be submitted by each Design-Build Team (Offeror) for this project. Offerors shall provide one original and five (5) identical copies of their proposal at the location specified in Section I.

Proposals may also be submitted electronically via Dropbox at the link provided below. <https://www.dropbox.com/request/7cVl6Lty71H7fvt321kp>

B. Phase I Proposal Format – The proposal shall be limited in format and length. Format will be 8-1/2” x 11” with foldout sheets allowed up to 11” x 17” in size. All foldout sheets, up to a maximum of 11” x 17” sheets will be counted as two pages and shall be labeled as such. Length of the proposal shall be limited to a maximum of twenty (20) numbered pages (printed sheet faces) of text no smaller than 10 point and/or graphics. If there is any question as to format requirements contact the Procurement Manager for clarification prior to submittal of the proposal.

Material excluded from the twenty (20) pages maximum count is limited to:

- Front Cover (photos with captions on inside cover allowed)
- Divider pages (blank except for title information)
- Back cover (photos with captions on inside back cover allowed)
- Transmittal letter (two-page maximum)
- Table of Contents page (one-page maximum, number as i)
- Certificate(s) of Insurance (include as Attachment A)
- Required Forms

C. Proposal Organization – All pages shall be numbered except for those specifically excluded from the page county. Double-sided pages and all foldout pages shall be counted as two (2) pages and shall be numbered as such. Proposals shall be organized and tabbed in the same order as the evaluation criteria.

D. Submittal Letter – (Two-page maximum) Each proposal must be accompanied by a submittal letter. The submittal letter shall identify the Offerors as follows:

- Identify the name and title of the person(s) authorized to contractually obligate the Offeror for the purpose of the RFP and the contract; and the name and license number of the A/E of record in New Mexico and the name and license number of the General Contractor.
- Identify the names, titles, telephone and fax numbers, and email address of persons to be contacted for clarification questions regarding this RFP.
- Shall represent that the information provided in the RFP proposal documents is truthful, accurate and complete and that the firm and individual responsible for the submission shall be fully responsible for and bound by all information, data, certifications, disclosures and attachments included in the RFP proposal documents.

- Agree to compliance with all codes, regulation, facilities, Santa Fe County standards and requirements in law.
- Be signed by the person authorized to contractually obligate the Offeror
- Acknowledge receipt of any and all addendums/amendments to this RFP.

E. Completed Campaign Contribution Disclosure Form – Refer to Required Forms and include as Attachment B.

VI. INSURANCE

A. Insurance Requirements – The minimum requirements for this RFP are:

- Architects Professional Liability (Errors and Omissions): a minimum of \$250,000 per occurrence and \$1,000,000 in the aggregate. Please refer to the Agreement for actual requirements. With this proposal submit a certification of Insurance showing current coverage equal to or greater than what is required in this RFP.
- Contractor's Commercial General Liability: a minimum of \$10,000,000 per occurrence and \$20,000,000 in the aggregate.
- Umbrella Policy in the amount of \$20,000,000

If the Design Build Team is a joint venture and/or association, the required insurance coverage will be in the name of the joint venture or association.

VII. EVALUATION

A. PHASE I - EVALUATION CRITERIA

Phase I of this solicitation will result in the short list of the most highly-qualified Offerors based upon Phase I evaluation criteria. A maximum of three (3) firms will be short-listed to then submit Technical and Price proposals for Phase II.

Shortlisting – A maximum of 1000 points are possible in scoring each proposal for the shortlist evaluation. The Evaluation Committee will rank and score the Phase I proposals for short-listing. The evaluation criteria to be used by the Selection Committee for the proposal shortlist and the corresponding point values for each criterion are as follows:

Criteria	Max.
	Points
Specialized design and technical competence of the business, including a joint venture or association regarding the type of structure required	300
Past Performance, documents record of performance of the team on projects of a similar nature relative to budget and schedule, quality of work and customer satisfaction, compliance with applicable laws and regulations and safety record.	200
Project staffing/craft labor capabilities, reliable staffing sources, reliable project staffing	150
Capacity and capability of business, including any consultants and their representatives, qualifications and locations to perform the work, including any specialized services within the time limitations.	150
Management plan, management and administration of the team and team resources	50
Health and Safety with respect to site safety and quality assurance/quality control	50
Proximity, familiarity and experience with the Project area and Site	50
New Mexico produced work	50

A.1. EVALUATION CRITERIA:

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offeror's are encouraged to fully address each category completely, as points are assigned for responses to each. Responses to the RFP shall include information and past project experiences specific to the team submitting the proposal.

Specialized Design and Technical Competence (300 points)

- Vision/mission and project delivery philosophy to include expectation statements concerning:
- Elements for successful partnering
- Proposed Design Period Peer technical/administrative review by the County's Team
- Brief history of firm in New Mexico
- List all design consultants and how they provide value to this project
- Firm's experience and ability to incorporate energy conserving and sustainable measures into project design and construction.

Past Record of Performance (200 points)

The Evaluation Committee will evaluate the quality of the response of the Offeror's past performance. The assessment of the Offeror's past performance will be used as a means of evaluating the relative capability of the Offeror's to successfully meet the requirements of the RFP. The Offeror must provide the information requested below for past performance evaluation or affirmatively state that they possess no relevant, directly related, or similar past performance.

Design Team: submit past performance data on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

Construction Team: submit past performance data on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

- Information on previous design/build projects where you have contracted together as a D-B Team, to include clear descriptions of the specific roles of the design and construction team owner's project budget, final construction cost estimates, bid price including accepted alternates, total number and cost of Change Orders.
- Explain any project difficulties and how the Offeror handled these issues.
- Attach Contractor's Final Application and Certification of Payment (AIA Form G702 or equal) for these design build project.

***Offerors are cautioned that the Selection Committee will use data provided by the teaming partners as well as data obtained from other sources in the evaluation of past performance.*

Project Staffing (150 points)

Provide an organizational chart of key project personnel and also address how critical subcontractors will be selected and managed.

Design Team: Submit resumes for the Design Team Project Manager, Project Architect, Design Quality Control Manager, and other key members of the design team that will be assigned to this project. Also,

describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.

Construction Team: Submit resumes for all key personnel (PM, QCM, Safety Manager and Project Superintendent) that demonstrates technical qualifications in all disciplines required to perform work similar to that described in the RFP. Also describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.

Capacity and Capability (150 points)

- Information regarding project team's past capability to meet schedules, meet budgets and meet project administration requirements.
- Indicate relationship of the project team's current workload to the project workload of this Project and personnel in the New Mexico office.
- Demonstrated ability to provide performance and labor/material payment bonds in amounts sufficient to cover the cost of the work on this Project.

Management Plan (50 points)

- Describe processes to minimize risk and to ensure that cost, schedule and quality status issues are clearly communicated with the team and the County's team.
- Firm's approach to project cost estimating and incorporation of Life Cycle Cost Analysis into design process.
- Communication protocol and software to support the same.

Health and Safety (50 points)

- Describe the processes and/or the plan to effectively and efficiently provide Quality Assurance/Quality Control and manage site safety.
- Submit insurance industry standard Experience Modifier Rate for each of the past three (3) years. If there are extenuating circumstances concerning ratings, provide background information and referenced for validation.

Proximity to and Familiarity with Santa Fe County and the Project site (50 points)

- Provide information relative to the project's location and how members of the project team can respond to issues at the site and with the community at large.
- Indicate previous projects completed in the close vicinity of this Project.

New Mexico Produced Work (50 points)

- The County's goal is to support New Mexico owned businesses. Indicate the volume of work to be produced by New Mexico firms, using New Mexico based employees on this Project. Indicate the number of New Mexico based employees that will be part of the Project Team.

PHASE II

B. PHASE II DOCUMENTS (Note: this information is tentative; the actual Phase II Proposal Requirements will be issued with Phase II of the solicitation)

Offeror's selected for the Phase II short-list will be notified of their selection and of the mandatory Phase II offeror's conference. The Phase II documents will be distributed to each Offeror and will include but not be limited to the following:

Section 1: Brief description of the requirements of the Phase II submission, and the general requirements for the quotes (using established wage rates, including NMGR as a separate line item, conforming to all applicable laws, etc.); listing of requirements for all communications during the Phase II proposal submission process; identification of general insurance requirements, liability and professional liability (Errors and Omissions) insurance requirements, as well as any special insurance information; bonding requirements.

Section 2: Detailed Program of Requirements documents with a breakdown of the specific scope of work under this Project.

Section 3: Staging area site map and specific requirements for Contractor's field office, Project Manager's field office and other logistics/staging are requirements.

Section 4: General requirements for the Project including the requirements for working in and around the project, specific requirements for project signage, and specific requirements for interfacing with the County and Using Agency staff.

Section 5: Facility Design Guidelines, which provides outline specifications to help guide the Offeror's with materials selections and setting standards of quality.

Section 6: The Bid/Proposal Form, which will require Construction Contractor's signature and will record the following:

- Lump Sum: A lump sum amount for the design and construction of the work, per the requirements of the detailed scope of work and all other requirements. The NMGR will be shown separately, as well as the total with the NMGR included.
- Schedule: A schedule showing the start and completion dates for all major activities and phased of the work, to include design, design reviews and approvals, permits and other agency reviews and approvals, construction by major activity, punch list and completion. This schedule will be a part of the information used in the evaluation process to select the Contractor.
- Alternates. Quoted pricing for any identified alternates with the acknowledgement that the lump sums quoted for each alternate includes all required labor, equipment, materials, associated materials and/or equipment items, profit, overhead, fees and general conditions and design/engineering costs to provide the work in a complete and timely manner.

- Allowances: Listing of specified allowances with the acknowledgement that they are in the lump sum quoted amount, to include all associated profit, overhead, fees and general conditions, and general design/engineering costs.
- Additive and Deductive Change Orders:
- The percentage of mark-up (profit, overhead, general conditions, design and related costs) that will be applied to the Contractor's direct construction costs for any additive or deductive change order quotes and/or work.
- The percentage of mark-up (profit, overhead, general conditions, design and related costs) that will be applied to the Contractor's direct construction costs for any additive or deductive change order quotes and/or work, where the design is provided by another entity.
- The total amount of mark-up (profit, overhead, general conditions, design and related costs) the Contractor will allow on any subcontractor's or supplier's direct labor, equipment, and/or material costs for any additive or deductive change order quotes and/or work.

Section 7: Owner provided information including, but not limited design guidelines, previously completed space programs, site, previously completed archeological reports, survey documents, and as-built plans (as available).

B.1. PHASE II EVALUATION CRITERIA (Note: this information is tentative; the actual Phase II Evaluation Criteria will be issued with Phase II of the solicitation)

A maximum of as many as three (3) Offeror's will advance to Phase II. Phase II will be evaluated on the Offeror's technical proposal and price proposal. Offeror's are required to submit separate technical and price proposals.

The success proposal will be the one that provides the best value to the County, based upon a total score calculated using the criteria listed below ("weighted criteria"). Criteria 3 and 4 below will primarily be evaluated considering the objectives stated in the project program, requirements stated in the performance specifications, service life span and guarantees, operating and maintenance costs, life cycle costs, appearance, operations fixtures and equipment.

Criteria	Max.
	Points
Project Staffing (previous score as Phase I unless conditions changed)	150
Past Performance (previous score as Phase I unless conditions changed)	200
Quality of Design Solution, including technical submittals	250
Quality of Construction Approach	100
Management Plan for constructing the Project	50
Cost and Schedule	250

B.2. PHASE II - EVALUATION FACTORS

A brief explanation of each evaluation category is listed below.

Project Staffing (150 points) (Offeror must indicate that conditions from Phase I have not changed) otherwise provide the following:

Provide an organizational chart of key project personnel and also address how critical subcontractors will be selected and managed.

Design Team: Submit resumes for the Design Team Project Manager, Project Architect, Design Quality Control Manager, and other key members of the design team that will be assigned to this project. Also, describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.

Construction Team: Submit resumes for all key personnel (PM, QCM, Safety Manager and Project Superintendent) that demonstrates technical qualifications in all disciplines required to perform work similar to that described in the RFP. Also describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.

Past Record of Performance (200 points) (Offeror must indicate that conditions from Phase I have not changed) otherwise provide the following:

The Selection Committee will evaluate the quality of the Offeror's past performance. The assessment of the Offeror's past performance will be used as a means of evaluating the relative capability of the Offeror's to successfully meet the requirements of the RFP. The Offeror must provide the information requested below for past performance evaluation or affirmatively state that it possesses no relevant, directly related, or similar past performance.

Design Team: submit past performance data on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

Construction Team: submit past performance data on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

- Information on previous design/build projects to include clear descriptions of the specific roles of the design and construction team owner's project budget, final construction cost estimates, bid price including accepted alternates, total number and cost of Change Orders.
- Explain any project difficulties and how the Offeror handled these issues.
- Attach Contractor's Final Application and Certification of Payment (AIA Form G702 or equal) for these design build project.

***Offerors are cautioned that the Selection Committee will use data provided by the teaming partners as well as data obtained from other sources in the evaluation of past performance.*

Quality of Proposed Design solution, including required technical submittals (250 points)

Evaluation will consider conformance to the Project Program Requirements including functional organization, space allocation and functional and operational requirements as reflected in the site and building layout. Offeror is to prepare conceptual drawings and plans that illustrate the architectural image of the proposed facility. These images will show site plan, conceptual floor plan and building elevations. Unique characteristics that the Offeror is proposing shall be shown separately to clarify intent.

- 168 - 250 points if proposal exceeds specified minimum performance or capability requirements in a way beneficial to the County; proposal must have more strengths and no deficiencies.
- 84 - 167 points if proposal meets specified minimum performance or capability requirements delineated in the Request for Proposals; proposal must have no deficiencies but may have one or more strengths.
- 0 – 83 points if proposal does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Proposal, but any such uncertainty is correctable.

Quality of Construction Approach (100 points)

Offeror is to describe the quality of products (building materials...) that have been included as part of the proposal. The discussion shall include any system enhancements to reduce life cycle costs of the building, and describe sustainable design features incorporated into the project.

- 68 – 100 points if the proposal exceeds specified minimum performance or capability requirements in a way beneficial to the County; proposal must have one or more strengths and no deficiencies.
- 34 – 67 points if proposal meets specified minimum performance or capability requirements delineated in the Request for Proposals; proposal must have no deficiencies but may have one or more strengths.
- 0 – 33 points if proposal does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Proposal, but any such uncertainty is correctable.

Management Plan for constructing the Project (50 points)

Offeror is to provide any enhancements to the personnel and procedures identified in the Phase I Qualification Statement.

- Describe how the construction will be managed, including security and safety controls, staging areas, delivery routes, crane locations and interfaces required at the site with the Using Agency.

- Address project specific criteria, risks that have been identified by the RFP and additional risks that the team has identified. State how those risks will be mitigated.
- Address protocol to support optimization of sustainability principles.
 - 34 – 50 points if proposal exceeds specified minimum performance or capability requirements that benefit the County; proposal must have one or more strengths and no deficiencies.
 - 18 – 35 points if proposal meets specified minimum performance or capability requirements delineated in the Request for Proposal; proposal; must have no deficiencies but may have one or more strengths.
 - 0 – 17 points if proposal does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Proposal, but any such uncertainty is correctable.

Project Schedule and Cost (250 points)

Offeror is to provide its proposed schedule dates for the Public Safety Complex Phase II Renovations Project including at a minimum the following:

- Indicate critical dates and other information in sufficient detail for the Selection Committee to determine if the time frames are reasonable.
- Describe ability of the firm to deliver the project within the construction time identified.

The proposal must address Final Completion and Certificate of Occupancy by 2022, but Offeror may propose an earlier date. Points will be awarded on basis of quality of viability of the schedule presented and the extent to which completion is within such date.

The total cost will be evaluated and substantiated for reasonableness and realistic cost assessment in relation to the proposed conceptual design. Offeror may submit a price proposal that is below the MACC, but in no case should a proposal be submitted in excess of the MACC inclusive of NMGR. Lowest cost will be awarded 250 points. The following formula will be used to calculate points for each higher cost proposal:

$$\text{Higher Cost} \dots \text{Lowest cost/higher cost} - \%, \text{ multiplied by } 250 \text{ points} = \text{total points}$$

END OF REQUEST FOR PROPOSALS

APPENDIX A
ACKNOWLEDGEMENT OF RECEIPT FORM
DESIGN/BUILD
RFP No. 2022-0068-PW/BT

In acknowledgement of receipt this Request for Proposal of the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents and ending in Appendix D.

The acknowledgement of receipt shall be signed and returned to the Procurement Manager no later than close of business on **January 7, 2022**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of the all Offeror written questions and the County's responses to those questions as well as RFP amendments, if any are issued.

FIRM:

REPRESENTED BY:

TITLE: _____ PHONE NO.: _____

EMAIL: _____ FAX NO.: _____

ADDRESS:

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to this Request for Proposal.

- ☐ Firm does intend to respond to this Request for Proposals.
☐ Firm does not intent to respond to this Request for Proposals.

Amanda Patterson-Sanchez
Santa Fe County Purchasing Division
142 W. Palace Avenue, 2nd Floor
Santa Fe, NM 87501
(505) 992-6753
apatterson-sanchez@santafecountynm.gov

APPENDIX B
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two-year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

OR

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (position)

APPENDIX C
RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (NAME OF CONTRACTOR) hereby certifies the following
in regard to application of the resident veterans' preference to this procurement.

Please check the box below:

☐ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is up to \$3M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

☐ I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans Preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory of the Business.

The representations made in checking the box constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

SIGNED AND SEALED THIS _____ DAY OF _____, 2022.

NOTARY PUBLIC

My Commission Expires:



STANDARD FORM OF PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 520

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

INSTRUCTIONS

For DBIA Document No. 520 Standard Form of Preliminary Agreement Between Owner and Design-Builder (2010 Edition)

Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.7	Attach exhibit for Additional Services (optional)
_____	Section 4.2.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.1	Complete blanks for calendar days
_____	Section 5.2	Attach exhibit for interim milestone dates (optional)
_____	Section 6.1	Insert the Contract Price
_____	Section 7.1	Insert the payment method
_____	Section 7.2	Complete blanks for interest rate
_____	Section 9.8	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America ("DBIA") has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is prohibited.

No.	Subject	Instruction
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term.</p> <p>Any modifications to these Documents should be underlined to distinguish them from original language. Any modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms - familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>DBIA Document No. 520, <i>Standard Form of Preliminary Agreement Between Owner and Design-Builder</i> ("Agreement") is for preliminary services only, not for construction services, and shall be used when Owner decides not to contract for the complete design and construction at one time. Use of this Agreement anticipates a two-stage approach to the Project, whereby Owner retains the Design-Builder to assist in the review and/or development of Owner's Project Criteria and for preliminary Schematic Design Documents. Then, depending upon the Design-Builder's Proposal, Owner has the option of contracting for final design and construction services by executing either DBIA Document No. 525, <i>Standard Form of Agreement Between Owner and Design-Builder – Lump Sum</i>, 2010 Edition, or DBIA Document No. 530, <i>Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price</i>, 2010 Edition. DBIA Document No. 525 and DBIA Document No. 530 can also be used when Owner desires preliminary services as part of a complete design-build contract.</p> <p>Under this Agreement, Design-Builder provides a Schematic Design and a Proposal for the completion of the design and construction. If Owner has not completed its Project Criteria before executing this Agreement, the Agreement allows for Owner to pay Design-Builder to assist in the development of Owner's Project Criteria as an Additional Service.</p> <p>If Owner does not accept the Proposal Design-Builder prepares under this Agreement, Owner may select another design-builder to complete the final design and construction. This Agreement allows Owner a limited license to use the Schematic Design and other Work Product created by Design-Builder under this Agreement to complete the Project, providing that Owner indemnifies Design-Builder for claims arising out of the use of the Work Product, and further agrees to compensate Design-Builder for the use of its Work Product. It is anticipated that Owner and Design-Builder will negotiate the compensation for the use of the Work Product prior to the execution of this Agreement.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.

Section	Title	Instruction
General	Related Documents	<p>This Agreement includes its own abbreviated general conditions and does not require the use of DBIA Document No. 535, <i>Standard Form of General Conditions of Contract Between Owner and Design-Builder</i>, 2010 Edition (“General Conditions of Contract”).</p> <p>Upon completion of the services under this Agreement, the parties may complete the final design and construction of the Project by executing either DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1, enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
1.2	Definitions	Although this Agreement is a stand-alone document, terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
2.1	Design Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.2	Preliminary Services	<p>If Owner’s Project Criteria are provided, Design-Builder’s review and written evaluation of the Project Criteria will promote a clear understanding of Owner’s program prior to Design-Builder’s preparation of Schematic Design Documents.</p> <p>This Agreement acknowledges that Owner may not have developed its Project Criteria prior to the execution of this Agreement, and provides that Owner may pay Design-Builder an additional fee to assist in this effort pursuant to Section 2.7, Additional Services.</p>
2.4	Proposal	Upon completion of the Schematic Design Documents, Design-Builder shall prepare its Proposal, which shall contain the information described in Sections 2.4.1, 2.4.2, 2.4.3, and 2.4.4. If the parties agree to additional or other requirements, state these requirements in Section 9.8, Other Provisions, or modify Section 2.4 appropriately.
2.4.2	Schedule	Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required and any Owner created constraints.
2.4.3	Other information	<p>Other information may be required to enter into a subsequent agreement for final design and construction. For example, if a Guaranteed Maximum Price (“GMP”) is proposed, Design-Builder will need to provide all documents used as the basis for the GMP and identify them in a GMP Exhibit. For a Lump Sum proposal, Design-Builder may need to create a Design-Builder’s Deviation List to identify any deviations from Owner’s Project Criteria.</p> <p>To identify other information that may be required, Design-Builder should familiarize itself with the terms of DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>

Section	Title	Instruction
2.6	Completion of the Agreement	If Design-Builder and Owner are unable to reach agreement on mutually acceptable revisions to the Proposal, and Owner does not accept the Proposal, Design-Builder will have no further involvement in the Project. Design-Builder's ownership of the Work Product prepared under this Agreement, and Owner's limited license to its use are described in Article 4, Ownership of Work Product.
2.7	Additional Services	Attach as a separate exhibit to this Agreement the scope of work for any Additional Services to be performed by Design-Builder, such as the development of Owner's Project Criteria pursuant to Section 2.2.2.
Article 4	Ownership of Work Product	<p>This Agreement provides that unless the parties select the optional provisions set forth in Article 4, Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product conditioned on the terms of Sections 4.2.1 and 4.2.2.</p> <p>DBIA recognizes that the critical decisions affecting the success of the Project and the greatest intellectual effort are typically developed during the preliminary phase. The purpose of Article 4 is to balance the interests of Owner, whose schedule will be adversely affected if it cannot use the Work Product created under this Agreement, and Design-Builder, who may not have been compensated for the full market value of its preliminary work, and who must be protected from liability for design that it does not complete or construct.</p>
4.2.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount of additional compensation Owner will pay Design-Builder for the right to use the Work Product. Enter the amount of this additional compensation.
5.1	Commencement Date	Design-Builder will commence its services within five (5) days of its receipt of Owner's Notice to Proceed, and complete its services no later than the calendar day duration of time negotiated between the parties. Enter the calendar days duration of this negotiated Contract Time.
5.2	Interim Dates	Attach an exhibit for interim dates, if any.
6.1	Contract Price	Insert the Contract Price, or the basis for its calculation as agreed to by the parties.
7.1	Payment	Insert the method agreed upon by Owner and Design-Builder for partial and final payment.
7.2	Interest	Enter the rate at which interest will accrue on Design-Builder's payments, if unpaid five (5) days after due.
9.1	Dispute Resolution	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. This Agreement provides for mandatory, non-binding mediation followed by binding arbitration for any dispute not resolved by mediation. The parties are encouraged to attempt to negotiate a mutually satisfactory resolution of any claim, dispute, or controversy prior to resorting to mediation.
9.8	Other Provisions	Insert any other provisions.

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Standard Form of Preliminary Agreement Between Owner and Design-Builder

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____ in the year of
20_____, by and between the following parties, for services in connection with the Project identified
below.

OWNER:

(Name and address)

DESIGN-BUILDER:

(Name and address)

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as
set forth herein.

Article 1

General

1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract").

Article 2

Design-Builder's Services and Responsibilities

2.1 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

2.2 Preliminary Services.

2.2.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

2.2.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an Additional Service pursuant to Section 2.7 hereof. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

2.3 Schematic Design Documents. Design-Builder shall prepare Schematic Design Documents based on Owner's Project Criteria, as may be revised in accordance with Section 2.2.2 hereof. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

2.4 Proposal. Based on Owner's Project Criteria, the Schematic Design Documents, as each may be revised pursuant to Sections 2.2.2 and 2.3 above, and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

2.4.1 a proposed contract price for the design and construction of the Project, which price shall be in the form of a lump sum or the cost of the work plus a fee with an option for a Guaranteed Maximum Price ("GMP");

2.4.2 a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;

2.4.3 all other information necessary for the parties to enter into DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), with the accompanying General Conditions of Contract, DBIA Document 535; and

2.4.4 the time limit for acceptance of the Proposal.

2.5 Review of Proposal. Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal.

2.6 Completion of This Agreement. Design-Builder's services under this Agreement shall be deemed completed upon meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder finds acceptable.

2.7 Additional Services. Design-Builder shall perform the Additional Services set forth in a separate exhibit to this Agreement. The cost for such services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

Article 3

Owner's Services and Responsibilities

3.1 Timely Performance. Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under this Agreement.

3.2 Owner's Project Criteria. Owner shall provide Design-Builder with Owner's Project Criteria. If Owner desires that Design-Builder assist Owner in developing such criteria as an Additional Service under Section 2.7 hereof, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project.

3.3 Owner Provided Information. Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

3.3.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.3.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.3.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project;

3.3.4 A legal description of the Site;

3.3.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

3.3.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth below.

4.2 Owner's Limited License. If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment in full of the amounts due Design-Builder under this Agreement, shall grant Owner a limited license to use the Work Product to complete the Project, conditioned on the following:

4.2.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"). Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product; and

4.2.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product in accordance with this Article 4.

[At the parties' option, one of the following may be used in lieu of Section 4.2]:

☐ If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment in full of the amounts due Design-Builder under this Agreement: (a) grants Owner a limited license to use the Work Product in connection with the Owner's completion of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in those portions of the Work Product that consist of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on the following:

4.2.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"). Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product; and

4.2.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product in accordance with this Article 4.

or

☐ If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment in full of the amounts due Design-Builder under this Agreement, transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on the following:

4.2.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"). Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product; and

4.2.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product in accordance with this Article 4.

Article 5

Contract Time

5.1 Commencement Date. Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. Design-Builder shall complete such services no later than _____ (_____) calendar days after the Date of Commencement.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement.

Article 6

Contract Price

6.1 Contract Price. The Contract Price for this Agreement is as set forth below: *(Provide for a fixed lump sum amount, cost of the work plus a fee with a GMP, hourly rates, or some other basis of compensation)*

6.2 Scope of Contract Price. The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement, and shall be deemed to include all the sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement.

Article 7

Procedure for Payment

7.1 Payment. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *(Insert terms)*

7.2 Interest. Payments due and unpaid by Owner to Design-Builder shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____%).

Article 8

Electronic Data

8.1 Electronic Data.

8.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

8.2 Transmission of Electronic Data.

8.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

8.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

8.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

8.3 Electronic Data Protocol.

8.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 8.3.

8.3.2 Electronic Data will be transmitted in the format agreed upon in Section 8.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

8.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information if such information changes prior to Final Completion.

8.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with

respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 9

Other Provisions

9.1 Initial Dispute Resolution. The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (“AAA”) pursuant to the Construction Industry Mediation Rules then in effect. Any claim, dispute, or controversy arising out of or relating to this Agreement or the breach thereof which has not been resolved by mediation shall be submitted to binding arbitration administered by the AAA pursuant to the Construction Industry Arbitration Rules then in effect.

9.2 Confidentiality. Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies it as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the services set forth in this Agreement.

9.3 Assignment. Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

9.4 Governing Law. This Agreement shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

9.5 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

9.6 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

9.7 Entire Agreement. This Agreement forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

9.8 Other Provisions. Other provisions, if any, are as follows:

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.



STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM

Document No. 525

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

1. **License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
2. **User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
3. **Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
4. **Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
5. **Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
6. **Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
7. **Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
8. **Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

INSTRUCTIONS

For DBIA Document No. 525 Standard Form of Agreement Between Owner and Design-Builder - Lump Sum (2010 Edition)

Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.1.3	Identify other exhibits to the Agreement
_____	Section 4.2	Note the optional provisions that are provided
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days and note the optional language that is provided
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages and note the optional provisions that are provided
_____	Section 5.5	If the parties select the option provided they have to insert an amount
_____	Section 5.6	Complete blanks for early completion bonus and note the optional provision that is provided
_____	Section 5.7	Note the optional provisions that are provided
_____	Section 6.1	Complete blanks for Contract Price
_____	Section 6.2	Insert markups for changes and note optional provisions
_____	Section 6.3.4	Note the optional provision that is provided
_____	Section 6.4.1	Note optional provision
_____	Section 7.1.1	Complete blanks for day of month
_____	Section 7.2.1	Complete blanks for retention percentage and note optional provision
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1.3	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Exhibit
_____	Section 10.2	Insert amount and conditions of bonds or other security and note the options that are provided
_____	Section 11.1	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America ("DBIA") has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Documents on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

Specific Instructions

Section	Title	Instruction
General	Purpose of This Agreement	<p>DBIA Document No. 525 ("Agreement") should be used only when the parties intend that Owner pay Design-Builder a lump sum fixed price for the completion of all design and construction services. There will be greater mutual understanding and cooperation if the lump sum is established based on Owner's Project Criteria that are well defined.</p> <p>If there is uncertainty about Owner's Project Criteria, or it remains to be developed by Owner and Design-Builder jointly, a cost-plus/guaranteed maximum price ("GMP") contracting approach may be more suitable. In such case, the parties should use DBIA Document No. 530.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page, 1 enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.2	Basis of Design Documents	The Basis of Design Documents are critical in establishing the scope of work. These documents include the Owner's Project Criteria, Design-Builder's Proposal, and the Deviation List, if any, contained in the Design-Builder's Proposal. Prior to the execution of this Agreement, Design-Builder will have submitted its Proposal based on Owner's Project Criteria. To avoid ambiguities or conflicts between Owner's Project Criteria and Design-Builder's Proposal, Design-Builder's Proposal shall specifically list any deviations from Owner's Project Criteria. Design-Builder's Deviation List shall, if accepted by Owner, become a Contract Document and shall have precedence over Owner's Project Criteria.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents subject to Owner's review and approval.
3.2	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. This hierarchy of documents reflects DBIA's belief that the Basis of Design Documents are critical documents that take precedence over other Contract Documents existing at the time the Agreement is executed. This section also makes clear that if a Deviation List exists it takes precedence over the Owner's Project Criteria. Moreover, Section 2.1.3 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.
3.3	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.

Section	Title	Instruction
3.4	Design Specification	The Owner is cautioned that if it includes design specifications in its Project Criteria, there is case law holding that the Design-Builder is entitled to rely on such information, and to the extent such information is not accurate, the Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time. Accordingly, the Owner to avoid such potential liability should consider using performance specifications.
4.1	Work Product	This Agreement provides that the Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project. This Section also provides the parties with the option of transferring ownership of some or all of the Work Product to the Owner upon payment in full for all Work performed. Generally, where the Owner desires ownership of Work Product, it is sufficient to transfer ownership of unique architectural and design elements.
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or third-party forces, Design-Builder shall grant Owner the rights set forth in Section 4.2, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.
4.4	Owner's Limited License Upon Design-Builder's Default	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, to complete the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2.
4.5	Owner's Indemnification for Use of Work Product	Owner's use or alteration of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved. The parties in this Section have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract if they want to use a Temporary Certificate of Occupancy as the benchmark. If this option is selected, Substantial Completion will be deemed to be achieved no later than the date a Temporary Certificate of Occupancy is issued if applicable to the Project.

Section	Title	Instruction
5.2.2	Interim Milestones	It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. As presently drafted no remedy is provided to the Owner if an interim milestone is not met. If the Owner has special requirements as it relates to interim milestones, the Owner may want to consider a remedy for the Design-Builder's failure to meet an interim milestone, as well as a bonus to the Design-Builder for satisfying such interim milestone.
5.4	Liquidated Damages	<p>Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder.</p> <p>Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed. The parties are also provided the option of establishing liquidated damages if the Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties have to negotiate the number of days, as well as the liquidated damages amount. The parties in negotiating liquidated damages should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to the Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.</p> <p>The parties also have the option here of eliminating liquidated damages altogether, in which case the Owner can recover actual damages for Project delay at an amount that is capped by the parties. The Owner is cautioned that even if this option for actual damages is selected it still cannot recover consequential damages, as these are waived under Section 10.5.1 of the General Conditions of Contract.</p>
5.5	Liquidated Damages Cap	The parties can agree to cap liquidated damages for delay at a negotiated amount.
5.6	Early Completion Bonus	If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. The parties also have the option in Section 5.6 of capping the early completion bonus at a negotiated amount.
5.7	Compensation for Force Majeure Events	The parties are provided the opportunity of providing the Design-Builder the right to receive compensation for Force Majeure Events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties have to negotiate how many cumulative days of Force Majeure delays must occur before the Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.
6.1	Contract Price	Enter the lump sum price Owner will pay Design-Builder for the Scope of Work. The Contract Price should compensate Design-Builder for the services it provides and the risk it assumes in providing single point responsibility to Owner.

Section	Title	Instruction
6.2	Markups for Changes	Enter the markups agreed upon by Design-Builder and Owner to be used for pricing Changes to the Work. Prior to negotiating or agreeing to these markups, both parties should familiarize themselves with Article 9 of the General Conditions of Contract, Changes to the Contract Price and Time. For additive Change Orders, the parties have to negotiate the Fee the Design-Builder will receive. For deductive Change Orders, parties have the option by checking the appropriate box of whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.3.4	Allowance Value	This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance Values. The Allowance Value for which the Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs and fee, are deemed to be included in the Contract Price. However, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.2.
6.4	Performance Incentives	There may be performance incentives that will influence Project success. Such incentives may include award fees tied to the Design-Builder achieving certain standards relative to client satisfaction, safety, and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. Any agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.
7.2.1	Retainage	<p>Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.</p> <p>The parties are provided the option of modifying the retainage provision by checking the box. This option excludes from retainage the Design-Builder's General Conditions costs and amounts paid to Design-Builder's Design Consultant. The rationale for selecting this option is that the Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-bid-build delivery method, the Owner typically does not retain sums from its designer.</p>
7.4	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
7.5	Record Keeping	The Owner is provided access to Design-Builder's accounting information as it relates to changes of the Work. However, if the parties have agreed to multipliers or markups for changes, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, the Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.

Section	Title	Instruction
8.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.3.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3.
Article 9	Representatives of the Parties	<p>Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively.</p> <p>Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively.</p> <p>The parties can elect to establish Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.</p>
10.1	Insurance	Attach an Insurance Exhibit setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.
11.1	Other Provisions	Insert any other provisions. For example, the parties may elect to have disputes resolved through litigation rather than arbitration in which case the optional language in this Section should be included.

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Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____ in the
year of 20_____, by and between the following parties, for services in connection with the Project
identified below.

OWNER:

(Name and address)

DESIGN-BUILDER:

(Name and address)

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree
as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

[At the parties' option, one of the following may be used in lieu of Section 4.2]:

☐ Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

or

☐ Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-

Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

4.3.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1. if the Project is subject to a Temporary Certificate of Occupancy]

☐ The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

"*Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner _____ Dollars (\$ _____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

[The parties may want to consider the following supplemental language within Section 5.4 if they want to assess liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 5.2.3 should be deleted and replaced with the following language.]

☐ Design-Builder understands that if Final Completion is not achieved within _____ days of the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within _____ days of Substantial Completion, Design-Builder shall pay to Owner _____ Dollars (\$ _____), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following]

☐ **5.4** Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Builder

to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Builder's liability for actual damages for delays exceed _____ Dollars (\$_____).

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]

☐ Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be _____ Dollars (\$_____).

5.6 Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (\$_____) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly)*

[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]

☐ Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is _____ Dollars (\$_____).

5.7 ***[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]***

☐ In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed _____ cumulative days. Said additional compensation shall be limited to:

[Check one box only]

☐ \$ _____ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

☐ the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$ _____) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

☐ No additional reduction to account for Design-Builder's Fee or any other markup.

or

☐ An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are

not subject to adjustment, regardless of the actual amount of the Allowance Item.

[In the alternative, the parties may want to delete Section 6.3.4 and add the following provision.]

☐ In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is _____ percent (_____%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4 Performance Incentives.

6.4.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.

[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.]

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the _____ (_____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain _____ percent (_____%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

[Design-Builder and Owner may want to consider substituting the following retainage provision.]

☐ Owner will retain _____ percent (_____%) from Design-Builder's Applications for Payment, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts

from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____) per month until paid.

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 *(Choose one of the following:)*

☐ The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

or

☐ Overhead and profit in the amount of _____ percent (_____ %) on the sum of items 8.1.1 and 8.1.2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

[The following Article 9 should be used only if the Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding

and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

[Check one box only. If no box is checked, then no bond is required.]

☐ Required ☐ Not Required

Payment Bond.

[Check one box only. If no box is checked, then no bond is required.]

☐ Required ☐ Not Required

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

☐ Required ☐ Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder's performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties, by including the following language, agree that the Design-Builder is obligated to achieve such standards.]

☐ Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the parties may want to delete such sections and include the following alternative dispute resolution clause.]

☐ Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

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